

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARVIN M. WYATT,

Plaintiff,

v.

**COMMISSIONER RICHARD F. ALLEN,
ALABAMA DEPARTMENT OF
CORRECTIONS; WARDEN CARTER
DAVENPORT, WARDEN FOR J.O. DAVIS
CORRECTIONAL FACILITY,**

Defendants.

CIVIL ACTION NO. 10-0517-CG-M

ORDER

Upon review of the Plaintiff's Report on Service of Defendant Carter Davenport filed on November 16, 2010 (Doc. 14) in response to the court's show cause order issued on November 9, 2011 (Doc. 11), the court notes that the plaintiff represented that Carter Davenport is no longer the warden of Fountain Correctional Facility, and that the summons and complaint sent by certified mail was returned unserved.¹ Plaintiff further advised that he intends to amend his complaint to add the new warden of said facility. No such request for amendment has been filed with this court to date, and the deadline for filing motions to amend the pleadings and join parties expired on January 5, 2011 pursuant to the Rule 16(b) Scheduling Order (Doc. 24).

This action was commenced on September 17, 2010; therefore, the deadline for service pursuant to Rule 4(m) of the Federal Rules of Civil Procedure expired on January 17, 2011.

¹The court notes that Fountain Correctional Facility and J. O. Davis Correctional Facility are the same entity pursuant to the Alabama Department of Corrections' website.

There being no proof of service on defendant Carter Davenport and in light of the plaintiff's representation that said defendant is no longer the warden of Fountain Correctional Facility, plaintiff's claims against Carter Davenport are hereby **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

DONE and ORDERED this 26th day of January, 2011.

/s/ Callie V. S. Granade
UNITED STATES DISTRICT JUDGE